

# Workshop Summary Paper on Hindu Succession Act under sections 6, 9 and 12

## INTRODUCTION:

Partition is the severance of the status of Joint Hindu Family, known as Hindu Undivided Family. Under Hindu Law once the status of Hindu Family is put to an end, there is notional division of properties among the members and the joint ownership of property comes to an end.

2. Partition could be partial as well. It may be partial vis-a-vis members, where some members go out on partition and other members continue to be the members of the family. It may be partial vis-à-vis properties where, some properties, are divided among the members other properties continue to be HUF properties. Partial partition may be partial vis-a-vis properties and members both.

## COPARCENARY

3. Within the joint family there is a narrower body called the Coparcenary. This includes the eldest male member + 3 generations. For eg: Son –Father – Grandfather – Great Grandfather. This special group of people is called coparceners and has a definitive right in ancestral property right since the moment of their conception. Earlier only a

Son/Son's son/Son's son's son was coparceners –now daughters are equally coparceners after 2005. They can get their share culled out by filing a suit for partition at any time. A coparcener's interest is not fixed it fluctuates by birth and deaths in the family.

4. The framers of the Indian Constitution took note of the adverse and discriminatory position of women in society and took special care to ensure that the State took positive steps to give her equal status. Articles 14, 15(2) and (3) and 16 of the Constitution of India thus not only inhibit discrimination against women but in appropriate circumstances provide a free hand to the State to provide protective discrimination in favour of women. These provisions are part of the Fundamental Rights guaranteed by the Constitution. Part IV of the Constitution contains the Directive Principles which are no less fundamental in the governance of the State and inter alia also provide that the State shall endeavour to ensure equality between man and woman. Notwithstanding these constitutional mandates/directives given more than fifty years ago, a woman is still neglected in her own natal family as well as in the family she marries into because of blatant disregard and unjustified violation of these provisions by some of the personal laws. To carry out reforms to remove the disparities and disabilities suffered by Hindu women, despite the resistance of the orthodox section of the Hindus, the Hindu Succession Act, 1956 was enacted and came into force on 17th June, 1956. It applies to all the Hindus including Buddhists, Jains and Sikhs. It lays

down a uniform and comprehensive system of inheritance and applies to those governed both by the Mitakshara and the Dayabahaga Schools and also to those in South India governed by the Marumakkattayam, Aliyasantana, Nambudri and other systems of Hindu Law.

5. In the year 1986 the State of Andra Pradesh, in the year 1990 the State Of Tamilnadu and in the year 1994 the State of Maharashtra and the State of Karnataka added Chapter II-A to Hindu Succession Act, 1956 containing Section 29-A, 29-B and 29-C, recognizing the daughter in Hindu joint family governed by Mitakshara Law as coparcener by birth in her own right in the same manner as the son having same right in the coparcenary property as she would have had, if she had been a son, inclusive of the right to claim survivorship subject to same liabilities and disabilities in respect thereto as that of son. On partition equal share allot able to a son is allotted to the daughters as a coparcener. However, as per Maharashtra Amendment 1994 said Chapter was not applicable to a daughter married before commencement of the Hindu Succession Maharashtra (Amendment) Act, 1994 which came into effect from 22.06.1994. By the said amendment the preferential right to acquire property in respect of interest in any immovable property of intestate or in any business carried on by him or her was also given to the daughter.

6. The Hindu Succession (Amendment) Act, 2005 is a landmark step towards women empowerment. This amending Act of 2005 is an attempt to remove the discrimination as contained in S. 6 of the Hindu

Succession Act, 1956 by giving equal rights to daughters in the coparcenary property as the sons have. Section 6 of the amendment act has an overriding effect, so far as the constitution of coparcenary, partition of a coparcenary property and succession of interest of deceased member (male or female) are concerned. It also supersedes all customs and usages of Shashtric Law in this regard.

7. As per sub Section (1) On and from the commencement of the Act of 2005 in a joint Hindu Family governed by Mitakshara law the daughter of a coparcener shall by birth become a coparcener in her own right in the same manner as the son and have the same rights and liabilities in respect of coparcenary property as that of a son. As per first proviso, coparcenary right given to a daughter shall not affect or invalidate any disposition or alienation including partition or testamentary disposition of the property which took place prior to 20.12.2004. Under Sub Section (2) a daughter who became coparcener and entitled to a property is capable of to dispose of her coparcenary interest in joint family property by testamentary disposition such as will, gift etc.

8. Sub Section (3) states that where a Hindu dies after commencement of the Act, 2005 his interest in the property of joint Hindu family governed by Mitakshara law shall devolve by testamentary or intestate succession under this Act and not by survivorship and the coparcenary property shall be deemed to have

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been divided as if a partition had taken place and daughter is allotted the same share as is allotted to a son.

9. Sub-section (4) states that the creditor has right to proceed against the coparcener irrespective whether it is the son or daughter for debts contracted by their forefathers. Sub Section (5) states that this section shall not apply to a partition which has been effected before 20.12.2004. Its explanation says that partition means any partition made by execution of a registered partition deed or by the decree of a Court.

## JUDICIAL DICTUM

10. **In Champabai Pardeshi Vs Shamabai Pardeshi 2010(3) All M.R.262** it came to be ruled that the Amendment Act,2005 will be retrospectively applicable in case of agricultural properties left by the deceased and further it has been observed by making reference to the Division Bench Ruling in Smt. **Kaushalyabai Vs. Hiralal 2007 (2) All M.R. 679** that the provisions of the Amendment Act, 2005 are required to be taken note of while deciding the appeal even though the suit had been filed far earlier to the Act of 2005.

11. The Hon'ble Apex Court in the case of **Prema Vs. Nanje Gowda AIR 2011 SC 2077** has held that as per the amendment in Sec. 6 of Hindu Succession Act Sec. 6 (a) was inserted by Karnataka amendment Act 1990 and as per this provision, in suit for partition unmarried daughter can

seek equal share in final decree proceedings in terms of amendments. Thus, as per this observation it is clear that the amendments in Sec. 6 of Hindu Succession Act can held to be retrospective in effect.

12. The provision of Amendment Act, 2005 has been held to be of prospective operation in relation to S.6 (1) (a) in **Sadashiv vs. Chandrakant 2012(2) Mh.L.J. 197.**

13. The Hon'ble Supreme Court in **Ganduri Vs. Chakiri Yanadi, AIR 2012 SC 169** held that the amended section 6 will apply to a partition suit wherein the final decree was not passed before the date of commencement of the Amended Act of 2005.

14. In **Leelabai Vs. Bhikabai, 2014 (4) Mh.L.J.**, it is held that the equal share given to the daughter of a coparcener governed by Hindu Mitakshara Law along with brothers is by way of a substantive right. Though the substantive right is created on and from 09.09.2005, it relates back to the incidence of birth.

15. In **Vaishali Ganorkar Vs. Satish, 2012 (3) Mh.L.J. 669** the Division Bench of Hon'ble Bombay High Court held that new section 6 was prospective in operation and it applied to daughters born on or after 09.09.2005. As regards the daughters born before 09.09.2005, it was held that they would get rights in coparcenary property upon the death of their father-coparcener on or after 09.09.2005. The Division Bench concluded that a daughter born on or after 09.09.2005 would be entitled to coparcenary right by birth while daughter born prior to 09.09.2005

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would be entitled to coparcenary property only on succession i.e. death of a coparcener to whose interest the daughter succeeds. The Division Bench also relied on the decisions of Apex Court in **G. Shekhar Vs. Geeta 2009 (5) Mh.L.J., 755** and **Sheeladevi Vs. Lal Chand 2007 (2) Mh.L.J., 1** wherein it was held that the Amendment Act of 2005 is prospective and would have no application where succession opened prior to the Amended Act 2005 coming into force.

16. However, in **Badri Nayaran Vs. Om Prakash 2014 (5) Mh.L.J. 434** the Full Bench of Hon'ble High Court held that the decision of the Division Bench in Vaishali Ganorkar's case is per incurium. *The Hon'ble High Court further held that new section 6 (1) (a) is prospective in operation whereas section 6 (1) (b) and(c) as well as section 6(2) are retroactive in operation.* Retroactive means the rights under section 6 (1) (b) and (c) and section 6(2) are available to all daughters living on the date of coming into force of Amendment Act of 2005 i.e. on 09.09.2005 though born prior to 09.09.2005. The daughters born on or after 09.09.2005 held to be entitled to get the benefits of amended Section 6(1) (a). In other words, the heirs of daughters who died before 09.09.2005 do not get the benefits of new section 6. It also held that new section 6 applies to daughters born prior to 17.06.1956 and thereafter in between 17.06.1956 to 08.09.2005 provided they are alive on 09.09.2005. Furthermore, the case of coparcener who died before 09.09.2005 would be governed by pre-amended section 6(1) of the Act. It is only in case of

death of a coparcener on or after 09.09.2005 that the amended section 6(3) of the Act would apply.

17. Now, the issue of retrospective or prospective effect of the new amendment Act is finally set at rest by the recent decision of Hon'ble Apex Court in the case of **Prakash Vs. Phulvati in Civil Appeal No. 7217/2013** wherein it is held that the amendment has prospective effect. The rights under the amendment are applicable to living daughters of living coparceners as on 9th September 2005 irrespective of when such daughters are born.

#### **ORDER OF SUCCESSION IN DIFFERENT CLASSES OF HEIRS AND DISTRIBUTION OF PROPERTY.**

18. The general rules of succession regarding male can be seen in Sections 8, 9 and 10 of this Act, whereas Sec. 15 deals with the succession about female Hindus. Sec 8 of the Act says that, property of a male Hindu dying intestate shall devolve firstly upon the heirs specified in class I of the schedule. In the absence of them it will devolve upon class II heirs and if there are no class I or class II heirs, upon agnates and cognates of the deceased. Thus, Sec. 8 specifies the category of heirs, on which the property of Hindu male can devolve. As per Sec. 9, heirs specified in class I shall take the property simultaneously and equally to the exclusion of others. It means Sec. 9 of the Act speaks about the



precedence of heirs i.e. who will precede over another. If there are class I heirs they will precede over the class II.

**Sec. 9 – Order of succession among heirs in the Schedule -**

19. Among the heirs specified in the schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II shall be preferred to those in second entry; those in the second entry shall be preferred to those in the third entry; and so on the succession.

**Class I heirs :-**

Class I heirs includes 12 persons i.e. son, daughter, widow, mother, son of a predeceased son, daughter of a predeceased, son of predeceased daughter, daughter of a predeceased daughter, widow of a predeceased son, son of a predeceased son of a predeceased son, daughter of a predeceased son of a predeceased son, widow of a predeceased son of a predeceased son.

**Sec. 12 – Order of succession among agnates and cognates :-**

20. The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down there under.

**Rule -1** of two heirs, the one who has fewer or no degrees of ascent is preferred.

**Rule - 2** Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

**Rule – 3** Where neither heir is entitled to be preferred to the other under rule 1 or rule 2 they take simultaneously.

### CONCLUSION

The basic object of the amendment to the Section 6 of the Hindu Succession Act is to achieve equal inheritance for all. Daughter whether married or unmarried of a coparcener in a Hindu joint family governed by Mitakshara Law now is coparcener by birth in her own right in the same manner as a son; she has right of claim by survivorship and has same liabilities and disabilities as a son; now coparcenary property to be divided and allotted in equal share. We have to bear in mind the law at present governing the field is the recent authority of Full Bench of our Parent High Court. The effect of recent Full Bench decision of APEX Court is that all daughters (married or unmarried) are having right in the coparcenary property as that of a son. However, such daughters must be alive on the date 9th September, 2005, the date on which the amendment was effected to Hindu Succession Act. Obviously said right is subject to the Limitation Act the daughter will not be having right if the partition effected prior to December, 2004 so also the daughter is not entitled any right if there is any disposition or alienation of the coparcenary property prior to December, 2004. Now, as per the new Amendment the daughters married or unmarried are having absolute

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right as that of a son in the coparcenary property. Therefore, in sum and substance , it is now well settled that, the new amendment of 2005 to the Hindu Succession Act, is prospective in effect.

Amended Section 6 applies to daughters born prior to 17<sup>th</sup> June 1956 or there after( between 17<sup>th</sup> June & 08<sup>th</sup> September 2005), provided they are alive on 09<sup>th</sup> September 2005 i.e. on the date when the Amendment Act of 2005 came into force. With reference to the guarantee of equality for women in Article 14 and 15 of the Constitution Of India ; amendment in Section 6 is brought with an intention to bring equality in succession and hence, undisputedly it applies to daughters born on or after 09<sup>th</sup> September 2005.

Several legal reforms have taken place since independence of India, including that of an equal share of daughters to property. Right in coparcenary property and the dwelling house will also provide social protection to women by giving them a potential shelter. Millions of women, as widows and daughters as well as their families thus stand to gain by this amendment. After the amendment came into force, the District Legal Services Authority, in Maharashtra, set in motion and conducted various awareness programmes in order to acquaint the provisions of the amended sections to the public at large.

**Easement and License with reference to Wajib-  
ul-arz , Section 165 of  
Maharashtra land Revenue Code and also with  
reference to  
Nanda Sathawane –Vs-Shankar 1991 MHLJ 1151.**

**Introduction:**

There are certain rights connected to the enjoyment of immovable property, without which rights, such property may not be conveniently and fully held and enjoyed. Such rights are called easement.

2. A great reliance has often been placed by the Courts on Wajib-ul-arz or riwaz-i-am for proof of customs. Those are village administration papers which were directed to be prepared by Regulation VII of 1822. These papers have been received in Evidence under S.35 of the Indian Evidence Act, which says that, "An entry in any public or other official book, register , or record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duties or by any other person in performance of a duty specially enjoined by law of the country in which such book , register or record is kept, is itself a relevant fact.

The statements therein may be accepted even if unsupported by instances, as the Supreme Court has emphasised that “the fact that the entries therein are the result of careful research of persons who might also be considered to have become experts in these matters after an open public inquiry, has given them a value which should not be lightly underestimated.” Thus, an entry in the *wajib-ul-arz* may be given in evidence as a relevant fact because being made by a public officer, it contains an entry of a fact which is relevant. These documents contain a record of customs prevalent in the villages in respect of whom they are prepared. The manner to prepare these papers with respect to custom appears to be that the officer recorded the statements of persons who were connected with the villages. Some of the persons whose evidence is taken may be the proprietors of villages who made statements declaring the existence of custom in question.

3. The Hon’ble Bombay High court in **Nanda Sathawane –Vs- Shankar 1991 MHLJ 1151** held that, the entries of customary rights recorded in the *wajib-ul-arz* are made “final and conclusive” after public enquiry contemplated under Section 165 of Maharashtra Land Revenue Code and thus they do not require any independent proof. Demand of separate proof of these entries would also defeat the very object of maintaining the *wajib-ul-arz* .

4. This view was also later on followed in the case of *Hariram Atraye –Vs- Uddal Lilhare* 2014(5) MHLJ 25 wherein the Hon'ble High Court held that the entries are final and conclusive and hence no additional and separate proof is required for the same.

### **What is an Easement?**

5. The term Easement is defined in Section 4 of the Indian Easement Act, 1882. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of certain other land not his own.

### **Dominant And Servient Heritages And Owners:**

6. The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

### **Kinds of Easements :**

- A continuous easement is one whose enjoyment is or may be continual without the act of man.

- A discontinuous easement is one that needs the act of man for its enjoyment.
- An apparent easement is one the existence of which is shown by some permanent sign, which, upon careful inspection by a competent person, would be visible to him.
- A non-apparent easement is one that has no such sign.

**Essential of an Easement :**

- There must be an owner or occupier of certain land.
- There must be a right vested in such owner or occupier (as such owner or occupier) to do and continue to do something, or to prevent and continue to prevent something done in, or upon, or in respect of, some other land.
- The right must be for the beneficial enjoyment of his land. Thus, if the right is not in any way connected with the enjoyment of the dominant tenement (property) it cannot be an easement.
- The other land in or upon which the right to be exercised, must not be owned or occupied by him, but by some other person.

**Conditions for the acquisition of an easement :**

- **Peaceably**
- **Openly**
- **As an easement**

- **As of right**
- **Without interruption**
- **Enjoyment must be for twenty years**

### **Who will acquire the Easement ?**

#### **1. Occupier :**

Where a person is in possession of property on behalf of owner, he can claim an easement.

#### **2. Tenant :**

Tenants in dominant tenement enjoying an easement as of right, acquire it from the landlord. When the plaintiff and defendant are tenants of a common landlord, the plaintiff can not acquire any right of easement over the defendants' tenancy land either under section 13 or section 15; for the beneficial enjoyment of his land. Tenant can acquire an easement over the adjoining land belonging to his landlord for the beneficial enjoyment of other immovable property not his own but belonging to someone else which also he happens to occupy for the time being as a tenant. Tenant can claim right of easement over his landlord's property based in immemorial user but not on prescription.

#### **3. Co-owner:**

Easementary right can not be claimed by co-owner in respect of a land held by him in co-ownership with other. The other co-owner's



consent is not necessary for the acquisition of any easement by any co-owner. But as his right of transfer of his interest is only a limited right he can not impose any easement on the joint property or any part thereof without the consent of his other co-owner.

#### **4. Lessee :**

No lessee can acquire an easement over the immovable property leased to him for the beneficial enjoyment of another property of which he happens to be the owner.

#### **5. Trespasser :**

Although the phrase, “any person in possession” would apparently include a trespasser also, but it can not be said that, he acts, “on behalf of the real owner”. Therefore, a trespasser can not acquire the easement.

### **How an Easement is acquired ?**

#### **A] By grant (section 8) :**

A grant of an easement may be made orally without any writing because the creation of easement by the servient owner over the land in his ownership or occupation does not amount to a transfer of ownership. The grant of easement may be express or implied from the circumstances and conduct of the parties to the easement. It may be presumed from the long user or may be inferred from some usage prevailing in the locality.

**B] By necessity, when there is a severance of two tenements (section 13):**

An easement of necessity means a necessity which is absolutely necessary for the enjoyment of a tenement into several independent units. Mere convenience is not the test for an easement of necessity. Easement of necessity arises only where, by a transfer, bequest or partition, a single tenement is divided into two or more tenements and any of those is to be situated in such a position that it cannot be enjoyed at all without certain privilege upon another such tenements. The creation of an easement of necessity is an outcome of the prior relationship between the tenements.

**C] By quasi necessity, when there is a severance of two tenements (section 13) :**

The term quasi easement has been applied to those easements which are not easement of absolute necessity but which come into existence for the first time by presumed grant on severance of two or more tenement formerly united into the sole ownership of one person. Quasi easement must be (a) apparent (b) continuous and (c) necessary for enjoying the dominant heritage as it was enjoyed before severance. The quasi easement claimed must be in existence at the time when the severances took place.

**D] By prescription (section 15) :**

Prescription means acquisition of a right or title by user of possession during the period and in the manner prescribed by law. A man who can not show any other title may acquire property or certain rights by showing that he has been in possession of the property or enjoying rights for a very long time.

**E] By lost grant, presumed from immemorial user :**

A right of easement is also created by grant. A grant of such right is presumed from long use or possession although the actual transaction of making such a grant cannot be discovered. If a party has been using a particular land for a particular purpose from time immemorial, it can be said that he has earned the right on the basis of doctrine of lost grant.

**F] By customs (section 18) :**

A customary easement is not an easement in the true sense of that expression. It is not annexed to the ownership of a Dominant tenement and its is not exercisable for the more beneficial enjoyment of the dominant tenement.

**G] By transfer :Section 19** lays down that a transfer or devolution of a property which may be due to act of parties or by operation of law, will convey the person in whose favour the transfer or devolution takes place.

**H] By law/statue/legislature:** Certain Laws/statue/legislature has granted the easement. For e.g. Land Acquisitions(Mines) Act.

**I] By the operation of the doctrine of acquiescence :**

Where the servient owner by active encouragement or passive acquiescence or other such conduct, has inducted a belief in the dominant owner upon which the dominant owner has acted , he would acquire an easement over the servient property.

## LICENCE

- **What is a licence ?**

Section 52 of the Indian Easement Act defines the word “licence”. A licence is a personal right granted to a person to do something upon immovable property of the guarantor and does not amount to the creation of an interest in the property itself. It is purely a permissive right and is personal to the guarantee. It creates no duties and obligations upon the person making the grant and is therefore, revocable except in certain circumstances expressly provided for in the Act itself. The licence has no other effect than to confer a liberty upon the licensee to go upon the land which would otherwise be unlawful.

- **Characteristics of Licence :**

- 1) No transfer of interest : A licence is a permission to do some act which, without such permission, would be unlawful.
- 2) No interest in accretions : A licensee has no interest in the property and therefore, he acquires no right by accretion.
- 3) Neither transferable nor heritable : A licence is neither transferable; nor heritable.
- 4) A licence is a matter purely personal between grantor and grantee.
- 5) Section 52 of Easement Act does not require any consideration, material or non-material, to be an element of the definition of licence, nor does it require that the right under the licence must arise by way of contract or as a result of mutual promises.
- 6) The person who grants the licence must be the owner of the property. The other person who gets the permission must be a stranger or have no right in the property.
- 7) Licence creates no duties and obligations upon the person making the grant and is therefore revocable except in certain circumstances expressly provided in the Act itself.
- 8) A licence is usually revocable by grantor, except in the two cases mentioned in the section 60 of Easement Act.
- 9) A subsequent transfer of the property terminates a licence.

10) A licensee cannot sue trespassers and strangers in his own name.

11) A licence is terminated by death of either party.

**In case of Vishivanath V. Jandabhai reported in 1990(2) Bom.C.R. 406,** it was held that a gratuitous licensee cannot claim any legal right in the property.

**Rights of licensee :**

1. When licence is revoked, licensee is entitled to reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.
3. When gratuitous licensee executes, gratuitous licensee is entitled to get compensation of expenses incurred by him after revocation of licence.

**Duties of Gratuitous licensee :**

1. He shall not cause injury or damage to the property.
2. He shall not make any permanent change in the property of licensor which is in his possession.
3. He shall abide each and every terms and condition of licence.
4. If licensor is not aware about any injury or damage caused to the property of licensor by third person, then it is the duty of licensee to inform it to licensor.

5. He shall disclose any defect in the property of licence to licensor if he finds it.
6. After completion of period of license, gratuitous licensee has to vacate premises/ property or to give possession of property to licensor.
7. To take care of property or premises of licence during the period of licence.

### **Revocation of Licence :**

Provisions of S.60 qualifies and restricts the scope of general provisions with reference to the revocability of licence under S.59 of the Act. If the licence is for some reasons irrevocable by the grantor himself S. 59 does not authorize the transferee to revoke it. The transferee of the property from a licensor has no higher rights than those of the transferor and consequently the transferee is not entitled to revoke the licence when the licensee had built upon the land.

#### **• License when revocable :**

A licence may be revoked by the grantor, unless (a) it is coupled with a transfer of property and such transfer is in force; (b) the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution. A bare licence can always be revoked by grantor. A licence, unlike

a contract, creates no mutual obligation and rights between parties and it may be revoked under this section except when it is one which falls within the exception mentioned therein.

### **Conclusion**

In sum and substance, the enteries recorded in Wajib-ul-arz are conclusive proof of the rights and thus, they do not require any other evidence to prove it. The enteries therein are result of careful research of persons who have been experts in those matters, after an open public inquiry, and therefore, has been given a specific value which should not be underestimated. The said enteries in those documents contain a record of customs prevailant in the villages, in respect of whom they are prepared.

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